



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 149 OF 2023

**XYZ
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for the applicant : Mr. Gandle Mahendra Panditrao
APP for Respondent-State : Mr. S.B.Narwade
...

CORAM : S.G. CHAPALGAONKAR, J.

Date of Reservation : 18.12.2023.
Date of Pronouncement : 22.12.2023

PER COURT :

1. This revision application is filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "JJ Act" for the brevity). The child in conflict with law, impugns order dated 27.04.2022 by Juvenile Justice Board as well as the order dated 16.08.2022 passed by the Sessions Judge, Beed in Criminal appeal No. 60 of 2022, by which a prayer of the applicant/CCL (for short "CCL") for his release on bail from the custody of the Observation Home, Beed, in connection with Cr.No. 443 of 2021, registered with Police Station Shivajinagar, Beed, for the offences punishable under

Sections 302, 109, 114 r/w 34 of the Indian Penal Code (for short "I.P.C.") has been rejected.

2. The applicant/CCL has been apprehended in pursuance of Crime No. 443 of 2021, registered on the information given by Shaikh Saajed Shaikh Sattar, who is the brother of the deceased. It is alleged that on 14.12.2021, at about 3.30 p.m., the informant received a telephonic message that his brother namely Saheed had been encircled by the accused persons and they were beating him. The mother of the accused Mohansingh was instigating the assailants. Accused Mohansingh raised assault of knife but was dogged by the Shaikh Shaheed. However, the applicant/CCL stabbed on his stomach. On such message the informant reached to the Government Hospital, where Doctor declared Shaikh Saheed to be dead. Accordingly, an offence came to be registered against the applicant/CCL, accused Mohansingh and his mother. The applicant/CCL has been apprehended and produced before the Juvenile Justice Board (JJB) on 15.12.2021. The bail application of the applicant/CCL came to be rejected. The Criminal Appeal No. 60 of 2022 that was filed before the Sessions Court, is also rejected by order dated 16.08.2022,

hence this revision.

3. Mr. Gandle, learned Advocate appearing for the applicant/CCL (for short “CCL”) submits that the CCL was aged about 14 years at the time of incident and he has been sent in observation home at Beed since 15.12.2021. However, for no good reasons his prayer for release on bail has been rejected, dehors object and scope of the enabling provisions under the Juvenile Justice (Care and Protection of Children) Act, 2015.

4. The learned APP strongly objects the prayer and submits that the evidence on record clearly depicts that the CCL took knife from the hand of co-accused and inflicted stab injury on the stomach of the deceased. The report of Psychological Analyst received from the Probation Officer along with the medical report of Civil Hospital, depicts that the CCL to be mentally fit. However, there are criminal antecedents to his discredit. She would submit that the CCL required counseling and there is threat to his protection.

5. Having considered the submissions advanced, it is apposite to refer Section 12 of the Juvenile Justice (Care and Protection of Children), Act, 2015, which reads as under :

“12. Bail to a person who is apparently a child alleged to be in conflict with law :-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person : Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home or a place

of safety, as the case may be, in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

6. The mandate of the aforesaid provisions requires that the CCL alleged to have committed a bailable or non bailable offence and apprehended, shall be release on bail with or without surety. The proviso to Section 12 (1) puts an exception, where there are reasonable grounds to believe that the release of CCL is likely to bring him into the association with any known criminal or exposed him to moral, physical or sociological danger or his release would defeat the ends of justice. It is therefore, evident that the denial of bail to the CCL

shall be for specific reasons akin to above proviso.

7. The Hon'ble Supreme Court of India, in the matter of **(2020) 14 SCC 327 – Re Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India and others**, dealt with the provisions of Section 12 under the Act and laid down certain guidelines while dealing with an application and seeking bail observed that the rejection of bail can only be for restricted reasons appearing in proviso to Section 12 (1) of the Act. Recently the High Court of Allahabad in case of **(2023) 1 High Court Cases (All) 78 – X-Juvenile Vs. State of U.P. and Others**, observed that the use of word “shall” in Section 12 of the Act raises presumption that particular provision is imperative and further observed that the Juvenile Justice (Care and Protection of Children) Act, 2015 is under obligation to release the CCL on bail with or without surety subject to reservations underlined under the proviso. It is further observed that the grant of bail to the CCL shall not be impeded by nature of gravity of offence alleged to have been committed by him.

8. If the aforesaid principle of law applied to the facts of the present case, it can be observed that the order impugned

sans requisite reasons for denial of bail to the CCL. The CCL is languishing in Observation Home since 15.12.2021. The period of 2 years has been already lapse. The social investigation report has been called from the Probation Officer. The father of the CCL expressed his willingness to take him in custody and give an undertaking that in case of release of CCL on bail, he would be trained for painting work i.e. business of the father.

9. There is nothing on record to indicate that the CCL is likely to come in association with the known criminals or get exposed to moral, physical or sociological danger or his release would defeat the ends of justice. In the wake of aforesaid circumstances the case is made out to allow this Revision Application and to release the CCL on bail by setting aside the impugned order passed by the Sessions Judge, Beed. Hence following order :

ORDER

- a) The Revision Application is allowed.
- b) The impugned order passed by the Additional Sessions Judge, Beed dated 16.08.2022 in Criminal Appeal No. 60 of 2022 order dated 27.04.2022 passed by the

Juvenile Justice Board, is hereby quashed and set aside.

c) The applicant/CCL be released on PR bond of Rs. 25,000/- (Rs. Twenty Five Thousand Only) with two sureties to be furnished by his father in the like amount.

d) The natural guardian/father of the applicant/CCL shall furnish an undertaking to take proper care of the applicant/CCL so that he would not indulge in any criminal activities, while on bail and shall be produced before the Children's Court, as and when required.

e) The Juvenile Justice Board, Beed shall inform about the release of the applicant/CCL on bail to the Probation Officer or the Child Welfare Officer as per the provisions of Section 13 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

f) The applicant/CCL shall not directly or indirectly induce, threaten or tamper with the prosecution witnesses in any manner.

**(S.G. CHAPALGAONKAR)
JUDGE**